

# INDIANA AS A FORERUNNER IN THE JUVENILE COURT MOVEMENT

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## INTRODUCTION

One of the nation's first juvenile courts was established in Indianapolis in 1903. In this Article, I will review the historical context in which juvenile courts were created in Indiana, the very interesting story of their authorization by the 1903 general assembly, the way in which the new court operated in Indianapolis, and the national recognition the new court received.

## I. HISTORICAL CONTEXT

At the end of the 19th century, this country's courts treated children accused of crimes the same as adult offenders. They were tried in courts of general criminal jurisdiction with all the formalities of the criminal law and its constitutional safeguards.<sup>1</sup> If convicted, they were incarcerated in adult jails and prisons.<sup>2</sup> Like the rest of the country, Indiana made no distinction between the adult and the child. Indiana made no special provision for separate confinement for children pending trial, the hearing of their cases, or their final disposition. If guilty, children might share incarceration with men and women in jail or a workhouse. In more serious cases, they might be transferred to the criminal court or be sentenced to the Indiana Boys' School or the Industrial School for Girls.<sup>3</sup>

This system brought scrutiny from reformers, most notably in Chicago, who believed that children should not be held as accountable as adult offenders.<sup>4</sup> Rather than subject children to the punitive, adversarial, and formalized trappings of the adult criminal process, the reformers envisioned a system that would treat

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1. HERBERT H. LOU, JUVENILE COURTS IN THE UNITED STATES 19 (1927); Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 106 (1909).

2. For example, a special committee of the Chicago Bar Association found that 575 children between the ages of ten and sixteen were confined in the city jail and that 1983 boys were committed to the city prison during the twenty months ending November 1, 1898. LOU, *supra* note 1, at 20-21 (citing T.D. HURLEY, ORIGIN OF THE ILLINOIS JUVENILE COURT LAW 12).

3. JUVENILE COURT OF MARION COUNTY, 1903-1905 REPORT 1, 5 (1905) [hereinafter 1903-1905 REPORT].

4. Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1223-24 & n.181 (1970) (citing COMMITTEE ON JUVENILE COURTS, REPORT TO THE CHICAGO BAR ASSOCIATION (1899)).

and rehabilitate a child based on an individualized evaluation of each youth's special circumstances.<sup>5</sup>

The reformers did not have to look far to find both a philosophy and a structure for dealing more humanely with juvenile crime. The doctrine of *parens patriae*<sup>6</sup> had already been invoked to justify vigorous state intervention on behalf of dependent children<sup>7</sup> and neglected children.<sup>8</sup>

Indiana provides a particularly good example. In 1889 and 1891, the general assembly passed, then amended, respectively, the Board of Children's Guardians Act, establishing in the state's largest counties a board of citizens to be appointed by the circuit judge. This board was charged with "the care and supervision of neglected and dependent children under fifteen years of age. . . ."<sup>9</sup> Under the new act, the board was authorized to bring an action in circuit court for the custody of any child the board had probable cause to believe was abandoned, neglected or cruelly treated by its parents.<sup>10</sup> The court was authorized to award custody to the

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5. NATIONAL ADVISORY COMM. ON CRIMINAL JUSTICE STANDARDS AND GOALS, JUVENILE JUSTICE AND DELINQUENCY PREVENTION 6 (1976). *But see* Fox, *supra* note 4, at 1229-30 (arguing that the juvenile court movement "changed nothing of substance" and served private sectarian interests rather than the public good).

6. *Parens patriae* literally means "parent of the country" and refers to the traditional role of the state as sovereign and guardian of persons under legal disability. BLACK'S LAW DICTIONARY 1114 (6th ed. 1990). *Parens patriae* originates from the English common law where the King had a royal prerogative to act as guardian for persons under a legal disability such as infants and those mentally ill. In the United States, the *parens patriae* function belongs with the states. *Id.*

7. The early juvenile court statutes defined "dependent child" as a boy under the age of sixteen or girl under the age of seventeen "who is dependent upon the public for support, or who is destitute, homeless or abandoned. . . ." Illinois Juvenile Court Act § 1, 1899 Ill. Laws 131, 131 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/2-4 (West 1992 & Supp. 1996)); Indiana Juvenile Court Act, ch. 41, § 1, 1907 Ind. Acts 59, 59 (repealed 1974) (current version at IND. CODE §§ 31-6-4-3, -3.1 (Supp. 1996) (child in need of services)).

8. The early juvenile court statutes defined "neglected child" as a boy under the age of sixteen or girl under the age of seventeen "who has not had proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill-fame or with any vicious or disreputable person; or who is employed in any saloon; or whose home by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; or whose environment is such as to warrant the state, in the interest of the child, in assuming its guardianship." Illinois Juvenile Court Act § 1, 1899 Ill. Laws 131, 131 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/2-3 (West 1992 & Supp. 1996)); Indiana Juvenile Court Act, ch. 41, § 2, 1907 Ind. Acts 59, 60 (repealed 1974) (current version at IND. CODE §§ 31-6-4-3, -3.1 (Supp. 1996)).

9. Board of Children's Guardians Act, ch. 125, § 2, 1889 Ind. Acts 261, 261-62 (superseded). In 1889, the general assembly also enacted a statute making it a misdemeanor for those with custody of a child to abandon or neglect that child. Act of Mar. 9, 1889, ch. 201, § 1, 1889 Ind. Acts 363, 363-64 (repealed 1976) (current version at IND. CODE § 35-46-1-4 (Supp. 1996)).

10. Board of Children's Guardians Act, ch. 125, § 2, 1889 Ind. Acts at 262.

board upon a finding that the allegations were true.<sup>11</sup> Shortly thereafter, a woman and her husband appealed the Marion Circuit Court's award of the custody of her three children to the Marion County Board of Children's Guardians. In affirming the trial court and the constitutionality of the statute, the Indiana Supreme Court invoked the doctrine of *parens patriae*:

[O]ur constitutions, and our laws enacted under it, sanction and confirm the great principle of the sovereign's guardianship of the children within the dominions of the sovereign. But while it is true that this great principle is thus sanctioned and confirmed, it is still true that the equally great principle that natural right vests in parents the custody and control of their children is confirmed and enforced. This high and strong natural right yields only when the welfare of society or the children themselves comes into conflict with it; but where there is such conflict the supreme right of guardianship asserts itself for the protection of society and the promotion of the welfare of the wards of the commonwealth.<sup>12</sup>

Illinois was the first state to employ the *parens patriae* philosophy to deal with both the juvenile offender as well as the dependent and neglected child. The Illinois legislature passed the first juvenile court act in 1899.<sup>13</sup> The first judge of the Chicago juvenile court, Richard S. Tuthill, described the "sole purpose" of his new court in terms of *parens patriae*: "[T]o give children what all children need, parental care."<sup>14</sup>

The Illinois statute (which would become a model for the nation, one widely used even today) authorized juvenile court judges to hear any case concerning a dependent child or a neglected child.<sup>15</sup> Upon finding that the child's best interest would be served by making the child a public ward, the court had several options, including placements in foster homes and institutions.<sup>16</sup> Similarly, the juvenile court was authorized to hear any case involving children accused of crimes.<sup>17</sup> If the court found the child guilty, it had several dispositional options, including returning the child to the parents, placing the child on probation, or putting the child in foster care or an institution.<sup>18</sup>

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11. *Id.* § 3 at 262-63 amended by Act of Mar. 9, 1891, ch. 151, sec. 2, § 3, 1891 Ind. Acts 365, 366-67 (superseded).

12. *Van Walters v. Board of Children's Guardians of Marion County*, 32 N.E. 568, 569 (Ind. 1892). *See also* Addison M. Beavers, *The Philosophy of Children's Court Proceedings*, in FIRST ANNUAL INSTITUTE OF THE JUVENILE AND CRIMINAL COURT JUDGES OF INDIANA 1 (1960).

13. Illinois Juvenile Court Act, 1899 Ill. Laws 131 (repealed 1965).

14. Richard S. Tuthill, *The Juvenile Court*, in INDIANA BULLETIN OF CHARITIES AND CORRECTION, June 1904, at 48, 52. *See also* Mack, *supra* note 1, at 109.

15. Illinois Juvenile Court Act § 7, 1899 Ill. Laws 131, 133 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/3-9 (West 1992)).

16. *Id.* § 8 at 133 (repealed 1965).

17. *Id.* § 9 at 134 (current version at 705 ILL. COMP. STAT. 405/2-1 (West 1992 & Supp. 1996)).

18. *Id.*

In transferring jurisdiction over children accused of crimes from adult criminal court to the *parens patriae* juvenile court, the constitutional safeguards applicable to juvenile offenders when prosecuted as adults fell by the wayside. The *parens patriae* philosophy mandated that the juvenile court provide children with care, custody, and discipline approximating, as nearly as possible, that which should be given by their parents. It provided that juvenile offenders should not be treated as criminals, but rather as children in need of aid, encouragement, and guidance.<sup>19</sup> Precisely because their purpose was to treat and rehabilitate—not punish—the child, it became a fundamental legal doctrine that juvenile proceedings were civil in nature rather than criminal.<sup>20</sup> Further, because these courts were not criminal courts, they did not have to provide the constitutional guarantees enjoyed by persons charged with crimes.<sup>21</sup> As one Indiana juvenile court judge would say many years later:

We are a Court *for* children, and children need no constitutional guarantees to protect them in the Courts *for* children. The Courts are given a great deal of power under the Juvenile Court law, which should always be used *for* the children and never *against* them.<sup>22</sup>

This theory remained well-entrenched in American law until rejected by a landmark series of Supreme Court rulings beginning in 1966 concerning the

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19. LOU, *supra* note 1, at 9-10. See Illinois Juvenile Court Act § 21, 1899 Ill. Laws 131, 137 (repealed 1965) (codified as amended in 705 ILL. COMP. STAT. 405/2-1 (West 1992)) ("This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents . . .").

20. See *In re Gault*, 387 U.S. 1, 14-18 (1967).

21. *Id.* at 14-15 & n.15; LOU, *supra* note 1, at 10; Mack, *supra* note 1, at 109. Juvenile courts were unsuccessfully challenged in other states during this era as depriving children of liberty without due process of law: *Ex parte Sharp*, 96 P. 563, 564 (Idaho 1908); *Marlow v. Commonwealth*, 133 S.W. 1137, 1141 (Ky. 1911); *State ex rel. Matacia v. Buckner*, 254 S.W. 179, 180 (Mo. 1923); violating the right to trial by jury: *Ex parte Januszewski*, 196 F. 123, 129-30 (C.C.S.D. Ohio 1911); *Ex parte Daedler*, 228 P. 467, 469-71 (Cal. 1924); *Marlow*, 133 S.W. at 1141; *Matacia*, 254 S.W. at 180; *Commonwealth v. Fisher*, 62 A. 198, 200 (Pa. 1905); *Mill v. Brown*, 88 P. 609, 612 (Utah 1907); and denying the right of appeal: *Januszewski*, 196 F. at 131; *Marlow*, 133 S.W. at 1141. The enactment of juvenile court statutes have also survived attacks against them as impermissibly creating a new court: *Lindsay v. Lindsay*, 100 N.E. 892, 894 (Ill. 1913); *Marlow*, 133 S.W. at 1138-39; *Ex parte Powell*, 120 P. 1022, 1023-26 (Okla. Crim. App. 1912); *Fisher*, 62 A. at 199; constituting class legislation: *Robison v. Wayne Circuit Judges*, 115 N.W. 682, 685 (Mich. 1908) (but striking the act for failure to provide a twelve-person jury); *Fisher*, 62 A. at 199; constituting local or special laws: *Cinque v. Boyd*, 121 A. 678, 685 (Conn. 1923); *Ex parte Loving*, 77 S.W. 508, 511-14 (Mo. 1903); *Mill*, 88 P. at 611; embracing more than one subject: *Robison*, 115 N.W. at 684; *Fisher*, 62 A. at 198; and conferring executive powers on judicial officers: *Nicholl v. Koster*, 108 P. 302, 305 (Cal. 1910).

22. Beavers, *supra* note 12, at 3 (emphasis in original).

applicability of constitutional rights in juvenile proceedings.<sup>23</sup>

## II. ENACTMENT OF THE INDIANA STATUTE

It is probably not surprising that Indiana was an early participant in the juvenile court movement, given the substantial commitment the state had made to helping dependent and neglected children. The 1889 Board of Children's Guardians Act was clearly a forerunner of the Indiana Juvenile Court Act.<sup>24</sup> That year also saw establishment of the Board of State Charities, a new state agency with responsibility for investigating and examining "the whole system of public charities and correctional institutions of the State."<sup>25</sup> In 1897, the general assembly gave the Board of State Charities a most important, if immodestly referred to, assignment: "child-saving."<sup>26</sup> Child-saving generally referred to the work of agents of the Board of State Charities in finding homes for dependent and neglected children and in supervising them after placement. A top priority was removing children from orphanages which existed in most Indiana counties and placing those children in family homes.

Excerpts from the early reports of the Board of State Charities's child-saving efforts give a flavor of this work. For example, the first report of the Board's state agent in charge of child-saving stated:

There are a few children that the public will have to support for an extended period, some permanently, but it should not be required to support any child, not a defective, if a good family home can be found to take it in and give it the natural training. The institution can do certain things for the child, but only in the rarest of cases is it other than a detriment to the child to require it to spend the impressionable years of its life in a place where the struggle for the means of existence is not daily witnessed and taken part in by the child. Long residence in an institution teaches a child to expect his support whether he earns it or not. When he goes out into the world to take care of himself, as he eventually must, he has to learn all those lessons that the home-bred boy has already acquired, almost unconsciously, in his daily contact with his fellows and the people surrounding him.

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23. See *infra* note 142 and accompanying text.

24. See LOU, *supra* note 1, at 18 (citing the Indiana Children's Guardians Act as an "immediate precedent of the Illinois juvenile court legislation").

25. Board of State Charities Act, ch. 37, § 2, 1889 Ind. Acts 51, 52 (repealed 1963). The Board of State Charities was not responsible for the management of these institutions but roughly performed the central office functions of today's Family and Social Services Administration and Department of Correction.

26. Orphan, Dependent, Neglected and Abandoned Children Act, ch. 40, § 8, 1897 Ind. Acts 44, 47 (repealed 1978). See INDIANA BD. OF STATE CHARITIES, ANNUAL REPORT 6, 33 (1897).

It is a principle in child-saving that for every homeless child there is some family home open that is suitable for that child and that would take it in and care for it, if the opportunity offered. Much of the difficulty encountered in placing children is to select the right child for the right home. We might state it the other way—the selection of the right home for the child. But the children we have; the homes we have to find.

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Our special effort is to place the children on farms as far as possible. To this end no effort is made to find city or town homes for them. No such home is refused, if it is a good one. We are influenced in selecting the farm home in preference to the city one largely because it more effectually removes the child from familiar surroundings and enables him to start anew. We think, too, that he will sooner learn the dignity of labor and sooner fit himself for his life struggle there.<sup>27</sup>

And this exuberant assessment in the state agent's report for 1901:

The State Agents have placed in family homes the past year 223

children, most of whom remain off public support. Thus far in its history, this agency has placed in private families 839 children, 62% of whom the public is relieved from maintaining. When we recall that it costs about \$100 to support each child, in an orphan's home, the saving to the State in a financial way may be computed at \$60,000 per annum. Of how much more value to the State is the saving of the children!<sup>28</sup>

Although dependent and neglected children were being "saved," alleged juvenile offenders for the most part were being confined with adults pending trial, being tried in the police and other adult criminal courts, and if convicted, incarcerated with adult offenders.<sup>29</sup> At that time, juvenile offenders were not beneficiaries of *parens patriae*.<sup>30</sup>

This was the situation in Indiana, at the turn of the century, when the protagonist of our story, George W. Stubbs, became Indianapolis Police Court Judge. Stubbs was born in Shelby County, Indiana, in September 1837, and spent his boyhood days there. He studied law, but soon after the beginning of the Civil War, he enlisted as a private in the Sixteenth Indiana Volunteer Infantry and served with honor in the Signal Corps. At the close of the war, he practiced law in Shelbyville for a time. In about 1871, he came to Indianapolis where he

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27. George W. Streeter, *State Agent's Report*, in INDIANA BD. OF STATE CHARITIES, ANNUAL REPORT 34, 35, 39 (1897).

28. *Child-Saving Work in Indiana and Other States*, INDIANA BD. OF STATE CHARITIES, ANNUAL REPORT 30 (1901).

29. 1903-1905 REPORT, *supra* note 3, at 5.

30. *But see* Fox, *supra* note 4, at 1192-1193 (arguing that juvenile offenders were in fact treated differently than adults by the adult criminal courts as a result of *parens patriae*).

continued to practice.<sup>31</sup>

When Stubbs took the bench to begin his second term as judge of the police court in the fall of 1901, he professed himself to be “astonished at the marked increase in the number of juvenile offenders brought before him. During the first thirty days of his second term more children under sixteen years of age were arrested for violations of the law than had been brought into court during his first two-year term.”<sup>32</sup> Judge Stubbs himself called the situation one of “grave concern,”<sup>33</sup> and it was reported some years later that the “idea of sending these children to jail, or even to the Reform School, if there was a possibility of saving them from the stigma of a sentence, and perhaps from a criminal career, was repugnant to his mind.”<sup>34</sup>

Judge Stubbs moved to alleviate the situation. On the first Friday in November 1901, he began the practice of setting aside one day each week for the trial of all children under sixteen years of age.<sup>35</sup> He secured the cooperation of Indianapolis Police Chief George A. Taffe in preventing the arrest and detention of children in the city prison. Instead, Stubbs and Taffe, serving under Mayor Charles A. Bookwalter, worked out a plan under which patrolmen took the boys and girls they arrested to their homes and instructed the parents to bring them to the police court on the following Friday.<sup>36</sup> Stubbs said, “Bonds were asked in serious violations of the law, but in the majority of cases the word of the parent and the child was taken as sufficient guarantee for the latter’s appearance, and only in rare instances was this confidence abused.”<sup>37</sup>

Privacy of juvenile proceedings was a matter of importance to Stubbs, and he tried to insure that only “those immediately concerned” attended the juvenile hearings.<sup>38</sup> Because the construction of his courtroom made that “almost impossible,” Stubbs tried holding hearings in his private chambers. He ultimately secured space in the City Building for the use of a special juvenile courtroom in the early spring of 1902. Through his own efforts, Judge Stubbs had created a de facto juvenile court in Indiana.<sup>39</sup>

But Stubbs was far from satisfied. He described the court as “very inadequate”:

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31. *Injuries Fatal to Judge G.W. Stubbs*, INDIANAPOLIS NEWS, Mar. 4, 1911, at 5; see also Ray Boomhower, *George W. Stubbs*, in *ENCYCLOPEDIA OF INDIANAPOLIS 1306-07* (David J. Bodenhamer et al. eds., 1994).

32. 1903-1905 REPORT, *supra* note 3, at 5.

33. *Id.*

34. *Origin and Formation of the Juvenile Court*, INDIANAPOLIS NEWS, June 22, 1907, at 19.

35. 1903-1905 REPORT, *supra* note 3, at 5.

36. James A. Collins, *The Juvenile Court Movement in Indiana*, 28 INDIANA MAG. HIST. 1 (1932).

37. 1903-1905 REPORT, *supra* note 3, at 1.

38. *Id.*

39. Collins, *supra* note 36, at 3; see also Michelle D. Hale, *Juvenile Justice*, in *ENCYCLOPEDIA OF INDIANAPOLIS 857-58* (David J. Bodenhamer et al. eds., 1994).

By far the most serious drawbacks were the lack (1) of preliminary investigation, (2) of adequate means of discipline, and (3) of preventive supervision following cases of suspended sentence. The law made no provision for the investigation of children's cases except as it directly concerned the offence itself. The trials were thus necessarily conducted from the point of view of punishment alone, since neither a knowledge of the causes leading to the offence, nor means for removal of such causes, was provided for. So obvious did this lack become that the Charity Organization Society<sup>[40]</sup> of the city detailed one of its workers to the Court in the fall of 1902 to assist in the work of more thorough investigation. Of this, and other agencies, the Judge made use to supplement the information of the Police Department, but the knowledge was practically rendered futile because the Court was given such limited authority in dealing with the child. The prerogative of suspended sentence was frequently used, but without supervision it was merely another name for complete discharge.<sup>41</sup>

At some point, Stubbs became aware of the new juvenile court in Chicago.

One story has it that he mentioned his frustration at his limited authority in dealing with juveniles one evening at the family supper table. His daughter, described as a "reading girl," is said to have suggested that he read a recent magazine which contained a short article about a juvenile court in Chicago. After reading it, he decided to go to Chicago.<sup>42</sup> Stubbs himself said he first learned of the Chicago juvenile court in 1901 from Amos W. Butler, the Secretary of the Board of State Charities, who advised him to go to Chicago and visit Judge Tuthill.<sup>43</sup>

Stubbs apparently made several trips to Chicago. He makes reference in one place to a trip in late 1901<sup>44</sup> and in another place to trips in February and April, 1902.<sup>45</sup> There is another report of a trip involving Stubbs, police court prosecutor James A. Collins, and *Indianapolis News* reporter William M. Herschell in August 1902. According to Collins, during this trip, Stubbs spent three days in Chicago watching proceedings in Judge Tuthill's court and gathering

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40. The Charity Organization Society was founded in 1880 as an administrative, investigative and referral service for affiliated charities. In 1922, it merged with other similar organizations to form the predecessor of today's Family Service Association. Patricia A. Dean, *Charity Organization Society*, in *ENCYCLOPEDIA OF INDIANAPOLIS* 402-03 (David J. Bodenhamer et al. eds., 1994).

41. 1903-1905 REPORT, *supra* note 3, at 6.

42. *Origin and Formation of the Juvenile Court*, *supra* note 34, at 19.

43. George W. Stubbs, *Juvenile Courts*, in *INDIANA BULLETIN OF CHARITIES AND CORRECTION*, June 1904, at 56.

44. Letter from Judge George W. Stubbs to Amos W. Butler, Secretary, Indiana Board of State Charities (Dec. 28, 1901), in *BOARD OF STATE CHARITIES CORRESPONDENCE COLLECTION* (Indiana State Archives, Commission on Public Records, Indianapolis).

45. 1903-1905 REPORT, *supra* note 3, at 6.



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Stubbs began working with a group of interested citizens to prepare a legislative proposal to the next general assembly that would establish a permanent juvenile court in Indianapolis. Stubbs said that although

[t]here was no doubt whatever in the mind of those interested that some law should be passed . . . , [t]here was . . . considerable difference of opinion as to the wisest and best form for this jurisdiction to take: whether it should be exercised by the Police, Criminal, or Circuit Court, or by an absolutely distinct and separate Court.<sup>47</sup>

Collins also recalled that the proposal to move all juvenile cases from several existing authorities to administration by a single court, met with opposition.<sup>48</sup> In any event, a meeting was convened by the Charity Organization Society and civic leader and philanthropist, John H. Holliday<sup>49</sup> at the office of the Union Trust Company. At least a dozen community leaders and judges attended, among them State Senator Charles N. Thompson.<sup>50</sup> The group agreed “that the best interests of the children” demanded that, at least in Indianapolis, an absolutely distinct and separate court should be created.<sup>51</sup> Senator Thompson agreed to sponsor the bill.<sup>52</sup>

Judge Stubbs did not restrict his efforts to organize support for legislative enactment of a juvenile court to one end of Market Street. Even as Indianapolis leaders were meeting at the Union Trust Company to organize support for the legislation, Stubbs was also developing allies in the statehouse. The most important of these was with Butler, Secretary of the Board of State Charities.

Butler is also a key figure in this story. He was born in Brookville on October 1, 1860, and earned an A.B. degree in 1894 and an A.M. degree in 1900 from Indiana University. Later in life he was awarded LL.D. degrees from Hanover College and Indiana University. Butler served as Board Secretary for twenty-five years, from 1898 to 1923; he served both Republican and Democratic governors. Widely known and nationally honored, he served as president of both the National Conference of Charities and Corrections and the American Prison Association.<sup>53</sup> At the time of his death, Butler was called the “Father of Social

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46. Collins, *supra* note 36, at 2.

47. 1903-1905 REPORT, *supra* note 3, at 7.

48. Collins, *supra* note 36, at 2, 3-4.

49. Holliday (May 31, 1846-Oct. 20, 1921) also founded *The Indianapolis News* and the Union Trust Company. Richard G. Groome, *John Hampden Holliday*, in *ENCYCLOPEDIA OF INDIANAPOLIS* 700 (David J. Bodenhamer et al. eds., 1994).

50. Collins, *supra* note 36, at 4.

51. 1903-1905 REPORT, *supra* note 3, at 7.

52. Collins, *supra* note 36, at 4.

53. *Amos W. Butler Dies; Welfare Authority*, INDIANAPOLIS STAR, Aug. 6, 1937, at 1, in 16 INDIANA BIOGRAPHY SERIES 82-83 (Indiana State Library); *Services to be Held Saturday for Dr. Amos W. Butler*, INDIANAPOLIS NEWS, Aug. 6, 1937, at 1, in 16 INDIANA BIOGRAPHY SERIES 83-85 (Indiana State Library).

Work in Indiana” and “[a]n earnest advocate for progressive legislation in behalf of the state’s underprivileged.”<sup>54</sup>

On December 28, 1901, Stubbs wrote to Butler that since his return from Chicago, he had been extremely busy but encouraged Butler to arrange for a meeting involving the mayor, members of the Board of Public Safety, and “other gentlemen and ladies referred to by you.”<sup>55</sup> Butler immediately responded and suggested that the two of them get together and “go over the situation especially in light of your Chicago experience. At that time we could arrange for the conference of which we spoke and to which you refer.”<sup>56</sup> Although I have been unable to find further specific reference to their meeting, Butler’s agency’s annual report for the fiscal year ended October 31, 1901, recommended that the legislature establish a juvenile court.<sup>57</sup>

This recommendation was issued in late 1901, and the legislature did not meet in 1902, so no action was taken. However, it did set the stage for a more extensive discussion and recommendation in the board’s annual report for the next year. In the 1902 report, Butler wrote:

In 1889, the Legislature of Indiana enacted into law the old common law principle that the court was the guardian of all minor children. This is known as the Board of Children’s Guardians Law. The purpose is to improve the condition of children who are in vicious or immoral surroundings, either by the renovation of the home, or the removal of the children. This law has been very efficient. It has done much for the prevention of pauperism and crime. The same principles have been carried out in some of the larger cities of our land in the establishment of juvenile courts. Chicago is entitled to the credit of having organized the first of these. Other cities have followed her lead. A few months ago Judge George W. Stubbs, of the Indianapolis Police Court, established, without authority of law, a children’s court. It was necessary to develop plans for the proper conduct of this court, the investigation of cases, and the supervision of children. Under the circumstances, it is believed that much good has been done through the establishment of this court, and we believe that proper legislation providing for juvenile courts in the larger cities of this State, and for the probation system, would be wise.<sup>58</sup>

The annual report went on to make the following recommendation to the legislature:

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54. Editorial, *Dr. Amos W. Butler*, INDIANAPOLIS STAR, Aug. 8, 1937, at 6, in 16 INDIANA BIOGRAPHY SERIES 84 (Indiana State Library).

55. Letter from Judge George W. Stubbs to Amos W. Butler, *supra* note 44.

56. Letter from Amos W. Butler, Secretary, Indiana Board of State Charities to Judge George W. Stubbs (Dec. 31, 1901), in BOARD OF STATE CHARITIES CORRESPONDENCE COLLECTION (Indiana State Archives, Commission on Public Records, Indianapolis).

57. INDIANA BD. OF STATE CHARITIES, ANNUAL REPORT 21 (1902).

58. INDIANA BD. OF STATE CHARITIES, ANNUAL REPORT 22-23 (1903).

Arrangements should be made for the establishment by law of a separate court for juveniles in the larger cities or counties of our State. This has been tried in other cities and proven very effectual. Under its proper operation, children need not be confined in the jail at all. They would be released under proper security, to appear at a specified time. The children would be tried in a separate room, at a different time from the other prisoners. The trial should be informal, and children, if necessary, can be paroled and placed in an orphans' home or such other place as is esteemed best for their welfare. When we realize that it is from the children that our prison population is to be recruited, those things which are inaugurated and will deal wisely and vigorously with the children who are entering evil ways, are surest to be most beneficial and result at a great saving to the State.<sup>59</sup>

Winfield T. Durbin, a Republican, was Indiana's governor at this time. Born May 4, 1847, in Lawrenceburg and not formally educated beyond elementary school, Durbin fought in the Union army and then came to Indianapolis. While working in the state capital, he met and married Bertha McCullough, the daughter of a wealthy Anderson businessman. He successfully pursued a variety of business interests in Anderson and eventually took over his father-in-law's interests. He achieved military prominence during the Spanish-American War as the colonel of an infantry regiment organized in Indiana that fought in Cuba. Using his business and military credentials, he secured the 1900 Republican gubernatorial nomination and was elected governor later that year. Durbin was the Republican nominee again in 1912, but the national split between the Republicans and the Progressives doomed his candidacy. He died December 18, 1928.<sup>60</sup>

Governor Durbin retained Amos Butler as the Secretary of the Board of State Charities, and when the governor delivered his State of the State Address to the 63rd Indiana General Assembly on January 8, 1903, he followed the Board's and Butler's recommendation in favor of the establishment of a juvenile court:

A children's court has been, in a measure, established by the Police Judge of Indianapolis, and the results are very satisfactory. There is,

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59. *Id.* at 30.

60. *W. T. Durbin, 81, Former Indiana Governor, Dies*, INDIANAPOLIS STAR, Dec. 19, 1928, at 1, in 3 INDIANA BIOGRAPHY SERIES 222-224 (Indiana State Library); *see also Winfield T. Durbin*, INDIANAPOLIS NEWS, Dec. 19, at 1, 1928, in 3 INDIANA BIOGRAPHY SERIES 231 (Indiana State Library); *see also Winfield T. Durbin*, INDIANAPOLIS NEWS, Dec. 18, 1928, in 3 INDIANA BIOGRAPHY SERIES 210 (Indiana State Library). At the time of his death, the newspapers reported that one of the major controversies of his administration involved legal proceedings: Governor Durbin refused to surrender to Kentucky its former governor, William Taylor, who was wanted in connection with the death of a defeated candidate for governor, William Geobel, on grounds that Taylor would not receive a fair trial. *W.T. Durbin, 81, Former Governor, Dies*, INDIANAPOLIS STAR, Dec. 19, 1928, at 1.

however, no specific law on the subject. Provision should be made by law for the establishment of such juvenile courts in the larger cities of the State. Wide latitude should be given to such courts to deal with juvenile offenders. It has been tried in cities of other states, and has proven effectual. Under the proper operation of such court children need not be confined in the jails. They could be released under proper security to appear at specified times and be let out on probation, to remain under the supervision and control of the court. They should be tried at least at a separate time, if not in a separate room, from adult offenders. It is from these juvenile offenders that criminals are recruited, and the establishment of a juvenile court would, in my opinion, go far toward eliminating from the ranks of hardened criminals these young recruits.<sup>61</sup>

With administration support, State Senator Charles N. Thompson introduced

Senate Bill 38, which called for the establishment of the juvenile court.<sup>62</sup> Thompson was serving his second term from Indianapolis. Born in Covington in 1861, he had graduated from Indiana Asbury College (now DePauw University) in 1882, and then worked as a clerk in the office of the recorder of the Indiana Supreme Court.<sup>63</sup> In 1885, he received a master's degree from DePauw and was admitted to the Indiana bar later that year.<sup>64</sup> He practiced law in Indianapolis from 1886 until his retirement in 1931. Following his two terms in the state legislature, he became a figure of considerable influence and prominence in local bar, historical and philanthropic activities. He died in 1949.<sup>65</sup>

Senator Thompson reportedly stated some thirty years later that there was little opposition to the bill in the Senate, but considerable and serious opposition in the House.<sup>66</sup> I have been unable to find any contemporary accounts of such difficulty, and in 1905, Judge Stubbs described the bill as passing "with but little opposition."<sup>67</sup> But the bill was significantly amended twice as it traveled through the legislature—the second time following gubernatorial veto.<sup>68</sup> Although it is uncertain how controversial these provisions were, it seems reasonably clear that there was some disagreement on the bill's provisions and that it fell to Senator Thompson to devise an appropriate compromise.

Senate Bill 38 closely tracked the 1899 Illinois statute and contained several

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61. Governor Winfield T. Durbin, *Message to the Sixty-Third General Assembly of Indiana*, in INDIANA SENATE JOURNAL 45 (1903).

62. S. 38, 63d Gen. Ass'y (Ind. 1903).

63. *Charles Nebeker Thompson*, 2 BIOGRAPHICAL DIRECTORY OF THE INDIANA GENERAL ASSEMBLY 413 (Justin Walsh et al. eds., 1984); *Charles Thompson, Dies in Michigan*, INDIANAPOLIS TIMES, Aug. 16, 1949, at 1.

64. *Retired Attorney Dies*, DEPAUW ALUMNUS 22 (1949).

65. *Id.*

66. Collins, *supra* note 36, at 8 n.7.

67. 1903-1905 REPORT, *supra* note 3, at 7.

68. INDIANA SENATE JOURNAL 45 (1903).

provisions that would later be modified.<sup>69</sup> The first of these provisions dealt with court jurisdiction. As discussed above, dependent and neglected children were subject to the jurisdiction of the circuit court under the Board of Children's Guardians' Act, and delinquent children were subject to the jurisdiction of the sundry criminal courts, depending upon the severity of their offenses. Following the Illinois act, the bill introduced in Indiana created a new juvenile court in each county with jurisdiction over the cases of dependent, neglected, and also delinquent children.<sup>70</sup>

Second, again like Illinois, the bill provided that the circuit court judge was to be the judge of the juvenile court.<sup>71</sup> Although the bill as introduced created a new court, its apparent practical effect was to transfer jurisdiction for all accused delinquents from the sundry criminal courts to the circuit court judge in his capacity as judge of the juvenile court. The circuit court judge retained jurisdiction over the cases of dependent or neglected children; but it would henceforth be exercised as judge of the juvenile court. No separate juvenile court for Indianapolis would have been created under the bill as introduced.

The third issue already visited in another context is the constitutional rights of the accused child. Despite the prevailing mood of courts of other states,<sup>72</sup> Thompson inserted language guaranteeing the right to a jury trial to any child in juvenile court.<sup>73</sup> The bill also provided that no child under fourteen was to be committed to a jail or police station. If a child was unable to give bail, the child was to be committed to the care of the sheriff, police matron or probation officer, who was to keep the child "in some suitable place provided in the city or county, pending the final disposition of its case."<sup>74</sup> The Indiana bill as introduced differed from the Illinois act only with regard to these two provisions. The Illinois act had no provision for jury trials, and the ban on jailing children extended only to age twelve, not fourteen.<sup>75</sup>

Fourth, the Illinois act, although specifically authorizing the placement of delinquent and dependent and neglected children in private institutions, provided that the juvenile court act did not affect any other provision of law affecting industrial or training schools. This was reported to be the result of a power struggle over whether state or private institutions would care for delinquent

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69. Illinois Juvenile Court Act, 1899 Ill. Laws 131 (repealed 1965); S. 38 (as originally introduced), 63d Gen. Ass'y (Ind. 1903).

70. *Id.*

71. As will be discussed in a moment, Senate Bill 38 was ultimately amended to create a free-standing juvenile court in Indianapolis, separate from the circuit court. Because Illinois did not create free-standing juvenile courts in 1899, one commentator contended that the juvenile court in Indianapolis was really the nation's first. Collins, *supra* note 36, at 4-5.

72. See *supra* note 21.

73. S. 38, § 3 (as originally introduced), 63d Gen. Ass'y (Ind. 1903).

74. *Id.* § 9.

75. Illinois Juvenile Court Act, § 11, 1899 Ill. Laws 131, 135 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/5-7 (West 1992 & Supp. 1996)).

children, a struggle won by the private charities.<sup>76</sup> This struggle may also have led to the act's instruction that the juvenile court take the religious preference of the child's parents into account in making placements.<sup>77</sup> The Indiana bill, as introduced, contained all of these provisions as well as language giving the Board of State Charities extensive powers to inspect and regulate all private institutions and schools into which delinquent, dependent and neglected children were placed.<sup>78</sup>

It is important to keep in mind that, with the notable exception of the jury trial guarantee and the age of children prohibited from being incarcerated with adults, the Indiana bill, as introduced, was the same as the Illinois act. What is not clear is whether this was the result of the scrivener's use of a sister state's language or the sponsor's concurrence with the policy choices represented by a sister state's act.

Senate Bill 38 was first referred to the First Division of the Senate Judiciary Committee on January 9, 1903, of which Senator Thompson was a member.<sup>79</sup> On January 14, the committee reported the bill back to the full Senate with a "do pass" recommendation.<sup>80</sup>

Apparently between January 14 and January 29, a decision was made that the contents of the bill needed to be revised. On the latter date, Senator Thompson asked that the bill be sent back to committee for "further consideration."<sup>81</sup> On February 3, the Judiciary Committee reported back a new version of Senate Bill 38 that made significant changes in the four areas of the bill just discussed.<sup>82</sup>

Similar to the bill as introduced, the juvenile court was given jurisdiction over delinquency, dependency and neglect cases. However, the new language provided that criminal complaints against juveniles would continue to be filed in adult criminal court, and, after investigation by the probation department, would be transferred to juvenile court.<sup>83</sup> Thus, delinquency cases would not be filed directly in juvenile court. Second, a separate, free-standing juvenile court was authorized for Indianapolis, but the bill retained the provision specifying that circuit court judges would preside over the juvenile courts of all the other

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76. Fox, *supra* note 4, at 1225-29.

77. Illinois Juvenile Court Act §§ 7, 9, 20, 1899 Ill. Laws 131, 133, 134, 137 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/2-27 (West 1992 & Supp. 1996)).

78. S. 38 §§ 6, 15, 18 (as originally introduced), 63d Gen. Ass'y (Ind. 1903).

79. INDIANA SENATE JOURNAL 78 (1903). The Judiciary Committee was comprised of two divisions. The first division, to which Senate Bill 38 was referred, consisted of Senator Parks, the chairman, and Senators Thompson, Wood, Dausman, Hendee, DeHaven, Lawler, Harrison and Milburn. *Id.* at 62.

80. *Id.* at 111.

81. *Id.* at 306.

82. S. 38 (as reported by Senate Committee on Judiciary No. 1 on February 3, 1903), 63d Gen. Ass'y (Ind. 1903) [hereinafter "S. 38, Feb. 3 version"], INDIANA SENATE JOURNAL 351-358 (1903).

83. S. 38, Feb. 3 version, §§ 1, 3, INDIANA SENATE JOURNAL 352, 354 (1903).

counties.<sup>84</sup>

Third, and most importantly, the right to a jury trial was diluted, with approval of the trial court required before a juvenile could receive a jury trial.<sup>85</sup> However, the language restricting the jailing of children under fourteen remained unchanged.<sup>86</sup>

Fourth, language giving the statutes governing industrial and training schools precedence over the juvenile court statute and requiring deference to parents' religious preferences in placement was deleted. Again, it is not clear whether this was done because that language was not relevant in Indiana or because of a significant policy choice by the legislature. In any event, the Board of State Charities retained the strong regulatory powers given to it in the original bill.<sup>87</sup>

These amendments primarily suggest a desire to create a separate court for Judge Stubbs. They also indicate support for broader discretion of juvenile court judges embodied by the *parens patriae* doctrine at the expense of the child's constitutional rights. The changes seem to reflect the strong hand of Amos Butler and his Board of State Charities in establishing a strong regulatory role in the care of delinquent, and dependent and neglected children. Finally, the amendments may represent a reluctance on the part of criminal court judges to relinquish jurisdiction over cases involving delinquent children.

From this point, the bill rapidly moved forward. In the Senate, it cleared second reading on February 9,<sup>88</sup> and, on February 16,<sup>89</sup> it passed by a vote of 35-0.<sup>90</sup> In the House of Representatives, the bill was assigned to the Committee on the Affairs of the City of Indianapolis on February 17.<sup>91</sup> On February 19, the Committee Chair, Representative Muir, reported the bill back to the House with a "do pass" recommendation.<sup>92</sup> On February 24, the bill had

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84. S. 38, Feb. 3 version, § 1, INDIANA SENATE JOURNAL 352 (1903).

85. S. 38, Feb. 3 version, §§ 3, 7, INDIANA SENATE JOURNAL 355, 356-57 (1903).

86. *Id.*

87. S. 38, Feb. 3 version, § 8, INDIANA SENATE JOURNAL 357 (1903). Provisions requiring prior approval of the Board of State Charities for the articles of incorporation or changes in the articles of incorporation of private associations was apparently inadvertently deleted in committee but reinstated on the floor. *See infra* note 89.

88. *Id.* at 610.

89. An apparent inadvertent deletion during recommitment required a special third reading amendment on the Senate floor. The bill was first referred to a committee of one, consisting of Senator Thompson, for an amendment reinstating a provision included in the original bill authorizing the Board of State Charities to approve or reject the articles of incorporation or any amendments to the articles of any "association whose objects may embrace the caring for dependent, neglected or delinquent children." *Id.* at 730.

90. *Id.* at 731.

91. INDIANA HOUSE JOURNAL 826 (1903). The Committee on Affairs of the City of Indianapolis consisted of Representative Muir, the chair, and Representatives Wright, Tarkington, Morgan, Miner, Bamberger, Stechhan, Wells and Corn.

92. *Id.* at 911.

its second reading and was ordered to a third reading.<sup>93</sup> On February 25, the bill passed the House by a vote of 77-3.<sup>94</sup> Because the House had passed the bill in the same form as it had originally passed the Senate, no further action was required, and the bill was sent to the Governor.<sup>95</sup>

But, on March 2, 1903, Governor Durbin vetoed the bill. He had been advised by Attorney General Charles W. Miller that the bill was unconstitutional because it did not provide sufficient legal protection for the children who would be brought into juvenile court.<sup>96</sup> In particular, it violated the right of the accused to a speedy trial because of the investigation requirement and because court approval was needed to receive a trial by jury.<sup>97</sup> In his veto message, Governor Durbin said:

The act provides that no child under the age of fourteen years shall be incarcerated in jail, but if a child should be over fourteen years of age and under the maximum age, during this preliminary investigation by the probation officer, such child might under the provisions of this bill, be confined in the jail, and thus be denied the right of a speedy trial guaranteed by the constitution.

The act does not provide the kind of trial that shall be had—whether it shall be governed by the rules governing trials in the circuit or criminal courts. In fact it makes no provision for a trial of any kind or the manner in which such trial should be conducted, except in very general terms. It makes no provision for an appeal to any court, either circuit, supreme or appellate, although the general appeal statutes might cover cases of this kind.

The act provides: “That in every trial of any such child, he shall be entitled to a trial by a jury of twelve persons, if he shall so elect and the court approve.”

The latter clause evidently abridges the right of trial by jury, and unquestionably, insofar as the right is abridged, it is unconstitutional.<sup>98</sup>

Governor Durbin noted that he was “in sympathy with the general features” of the bill and referred to the fact that he had called for the adoption of a juvenile court in his State of the State Address. He indicated to the legislature that he would give his approval to a bill establishing a juvenile court if the objectionable features were eliminated.<sup>99</sup>

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93. *Id.* at 998.

94. *Id.* at 1053; INDIANA SENATE JOURNAL 969 (1903).

95. INDIANA HOUSE JOURNAL 1178 (1903).

96. *Juvenile Court Bill*, INDIANAPOLIS NEWS, Mar. 3, 1903, at 1.

97. *Id.*

98. INDIANA SENATE JOURNAL 1148 (1903).

99. *Id.* at 1148-49.



Senator Thompson responded by introducing Senate Bill 393 on March 3, the day after the veto. The new bill was identical in all respects to Senate Bill 38 except that two provisos were added to section 3.<sup>100</sup> The first removed the clause that had given the trial judge the authority to deny an accused child a jury trial.<sup>101</sup> The second provided that if a child was unable to make bond and the trial court did not release them on their own recognizance, then the child was entitled to an immediate hearing and trial in juvenile court.<sup>102</sup> The Senate suspended the rules in order to permit all three readings of the bill to occur on the same day and sent the bill to the House after approving it by a vote of 40-0.<sup>103</sup> The bill passed the House unchanged on March 5 by a vote of 71-11.<sup>104</sup> Having satisfied his objections, Governor Durbin signed Enrolled Senate Act 332 into law on March 10, 1903.<sup>105</sup>

With the juvenile court bill now law, immediate attention turned to the appointment of the new juvenile court judge. Judge Stubbs, of course, was the logical choice. On March 12, 1903, he wrote Governor Durbin as follows:

It is very embarrassing to me to ask anything for myself, but I would greatly appreciate the appointment of Judge of the new Juvenile Court, and would esteem it a very great favor indeed if you could see your way clear to give me the place.

I have handled the cases against boys and girls for some sixteen months now, and have become greatly interested in the work. With the experience I have had I believe I could be of great benefit to the children as well as to the community under the new law.<sup>106</sup>

At the same time, a long list of prominent Indianapolis citizens signed a letter to the governor recommending his appointment. In their letter they said,

Judge Stubbs has done more than any other one man in our city to bring about the legislation on [the] subject [of the Juvenile Court]. For more than a year he has maintained a separate court for the trial of children's cases and has met with marked success. His appointment to this office will meet with the approval of all of our citizens.<sup>107</sup>

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100. S. 393 (as originally introduced), 63d Gen. Ass'y (Ind. 1903).

101. *Id.* § 3.

102. *Id.*

103. INDIANA SENATE JOURNAL 1152-54 (1903).

104. INDIANA HOUSE JOURNAL 1368-69 (1903).

105. INDIANA SENATE JOURNAL App. 89 (1903).

106. Letter from Judge George W. Stubbs to Governor Winfield T. Durbin (Mar. 12, 1903), in GOVERNOR WINFIELD T. DURBIN CORRESPONDENCE COLLECTION (Indiana State Archives, Commission on Public Records, Indianapolis).

107. Among the three dozen signatories to this letter were insurance agency owner John J. Appel; postmaster Henry W. Bennett; political figure and hotel proprietor William E. English; father of the Indianapolis park system Dr. Henry Jameson; Senator Thompson; retail hardware,

Governor Durbin apparently had no difficulty in swiftly agreeing to Stubbs' appointment.<sup>108</sup> Thus, Indianapolis had a free-standing juvenile court, and all other counties of the state had juvenile courts as well, existing under the auspices of their circuit courts.

That Indiana was a forerunner in the juvenile court movement cannot be disputed. The Illinois Juvenile Court Act was approved April 21, 1899;<sup>109</sup> the Colorado Juvenile Court Act was approved March 7, 1903,<sup>110</sup> and our Juvenile Court Act was approved March 10, 1903.<sup>111</sup> Though differing from each other in some respects,<sup>112</sup> each act was virtually identical to the others in the power and flexibility given to the juvenile court judge in dealing with delinquency cases.

manufacturing and supply businessman Franklin Vonnegut; and Fletcher Savings and Trust Company President Evans Woollen. Letter to Governor Winfield T. Durbin (undated), *in* GOVERNOR WINFIELD T. DURBIN CORRESPONDENCE COLLECTION (Indiana State Archives, Commission on Public Records, Indianapolis). For information on the signatories listed, see *ENCYCLOPEDIA OF INDIANAPOLIS* (David J. Bodenhamer et al. eds., 1994).

108. 1903-1905 REPORT, *supra* note 3, at 7 (Stubbs was appointed on March 23, 1903.).

109. Illinois Juvenile Court Act, 1903 Ill. Laws 131 (repealed 1965).

110. Colorado Juvenile Court Act, 1903 Colo. Sess. Laws 178. Currently, article 2 of the Colorado Children's Code deals with the juvenile justice system in Colorado.

111. Indiana Juvenile Court Act, ch. 237, 1903 Ind. Acts 516 (repealed 1963).

112. Although these three statutes had many similarities, the juvenile court system differed somewhat from bill to bill. The Illinois act conferred jurisdiction over both delinquency and dependency and neglect cases on the circuit and county courts of each county in Illinois and authorized the judges of the circuit court of Cook County to designate one of their number to hear all juvenile cases in a special courtroom. Illinois Juvenile Court Act, §§ 1-3, 1899 Ill. Laws 131, 131-32 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/1-11, 2-1, 2-2 (West 1992 & Supp. 1996)). Any party being tried under the Illinois act was entitled to a six person jury. *Id.* § 2 at 132 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/1-2 (West 1992 & Supp. 1996)). The Colorado act conferred jurisdiction over delinquency cases (but not dependency or neglect cases) upon all county courts of the state, with the larger counties in the state authorized to refer to such proceedings as occurring in juvenile court. Colorado Juvenile Court Act §§ 1-2, 1903 Colo. Sess. Laws 178, 178-79 (current version at COLO. REV. STAT. ANN. § 19-1-104 (West 1996)). There were no provisions in the Colorado act dealing with jury trials. The Indiana act, as we have seen, explicitly created a juvenile court presided over by the local circuit court judge in each county of the state, with a separate, free-standing juvenile court in Marion County for delinquency, dependency and neglect cases. Indiana Juvenile Court Act, ch. 237, § 1, 1903 Ind. Acts 516, 517 (repealed 1963) (current version at IND. CODE § 31-6-2-1.1 (Supp. 1996)). This feature led one Hoosier observer to argue "that Indiana is entitled to the credit of having established the first separate Juvenile Court." Collins, *supra* note 36, at 7. And, of course, the Indiana act guaranteed a child a trial by a twelve member jury. Indiana Juvenile Court Act, ch. 237, § 3, 1903 Ind. Acts 516, 519 (repealed 1978). *See* IND. CODE § 31-6-7-3 (Supp. 1996) (outlining rights of juveniles and procedure for waiving those rights); *Beldon v. State*, 657 N.E.2d 1241, 1244 (Ind. Ct. App. 1995). *See also* IND. CODE § 31-6-3-1 (Supp. 1996) (rights of juveniles in juvenile court proceedings); *id.* § 31-6-7-10(g) (Supp. 1996).

Each also contained the following language, which reflected the *parens patriae* philosophy:

This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: That the care, custody and discipline of the child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done, the child is to be placed in an improved family home and become a member of the family, by legal adoption or otherwise.<sup>113</sup>

### III. A JUVENILE COURT FOR INDIANAPOLIS

It appears that Judge Stubbs got most, if not all, of what he wanted in the new legislation. First, the act specifically addressed Stubbs's concern over the privacy of juvenile proceedings by mandating that trials be held in chambers or the juvenile courtroom and authorizing the judge to exclude from the courtroom any and all persons whose presence the judge considered unnecessary for the trial of the case.<sup>114</sup>

Second, the act authorized the establishment of juvenile probation officers, to be appointed by the juvenile court judge. Their duties included: investigation of charges made against juveniles, attendance at every trial "in the interest of the child on trial," and assistance in placement and supervision of the child following trial and disposition of the case.<sup>115</sup>

Third, the juvenile court was authorized to select from a wide range of alternatives in disposing of cases. Under the statute, criminal charges could still be filed in any criminal court against a child.<sup>116</sup> However, unless the crime charged was punishable by death or a life sentence, the criminal court judge was required to notify the juvenile probation officer. If, after investigation, it appeared to the probation officer that the child was guilty, the case would be transferred to the juvenile court.<sup>117</sup> After a hearing, the juvenile court judge was authorized to make one of the following dispositions based on what would best

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113. Colorado Juvenile Court Act § 12, 1903 Colo. Sess. Laws 178, 186 (current version at COLO. REV. STAT. ANN. § 19-1-101 (West 1996)). Indiana Juvenile Court Act, ch. 237, § 10, 1903 Ind. Acts, ch. 516, 522 (repealed 1978) (current version at IND. CODE § 36-6-1-1.1 (Supp. 1996)); Illinois Juvenile Court Act § 21, 1899 Ill. Laws 131, 137 (repealed 1965) (current version at 705 ILL. COMP. STAT. 405/1-2 (West 1992 & Supp. 1996)).

114. Indiana Juvenile Court Act, ch. 237, § 4, 1903 Ind. Acts 516, 519-20 (repealed 1978) (current version at IND. CODE § 31-6-7-10 (Supp. 1996)).

115. *Id.* §§ 2-4, 1903 Ind. Acts at 517-20 (§ 2 repealed 1963; §§ 3, 4 repealed 1978); *see* IND. CODE § 31-6-4-19 (Supp. 1996).

116. This provision was deleted in 1905, permitting the direct filing of criminal complaints against juveniles in juvenile court thereafter. Act of Feb. 27, 1905, ch. 45, sec. 1, § 3, 1905 Ind. Acts 51, 51-55 (repealed 1978) (current version at IND. CODE § 31-6-2-1.1 (Supp. 1996)).

117. Indiana Juvenile Court Act, ch. 237, § 3, 1903 Ind. Acts 516, 518 (repealed 1978) (current version at IND. CODE § 31-6-2-1.1 (Supp. 1996)).

serve “the public interest and the interest of the child”:

- (1) Return the child to his or her parents, guardians or friends;
- (2) Place the child in the family of some suitable person until age 21 or any less time;
- (3) Place the child in the county orphanage or some other Indiana institution regulated and approved by the State Board of Charities;
- (4) If the child was found guilty of the offense charged and appeared to the court to be “wilfully wayward and unmanageable,” send the child to Boys’ School, the Industrial School for Girls, or to any state penal or reformatory institution; or
- (5) If the health or condition of the child required it, place the child in a public hospital or institution for treatment or special care, or in a private hospital or institution, which would receive it for like purposes without charge.<sup>118</sup>

On April 1, 1905, Judge Stubbs issued a report of the activities of the juvenile court during its first two years of existence. In this fascinating document, Stubbs sets as his court’s goal “the actual training of its wards into law-abiding citizenship.” The following methods were employed:

- (1) The complete isolation of juvenile delinquents from adult offenders in the hearing of their cases and in the place of detention;
- (2) Thorough investigation of the character and history of every child and of its environment preliminary to the trial;
- (3) Wide latitude in the disposition of the child for its best individual welfare; and
- (4) A complete system of supervision over the wards of the Court subsequent to their trial.<sup>119</sup>

Stubbs was particularly proud of his probation system, which he described as “the distinctive feature of the Court.”<sup>120</sup> What made it distinctive was the use of volunteer probation officers. Using such organizations as the YMCA, the Boys’ Club, the Neighborhood House, the Indiana Children’s Home Society, the Charity Organization Society, and local churches as his base, Stubbs established a permanent organization of volunteer probation officers. At the time of his April 1, 1905, report, there were 305 persons on his volunteer list, 172 of whom had

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118. *Id.* See IND. CODE § 31-6-4-15.4 (Supp. 1996) (listing dispositional options).

119. 1903-1905 REPORT, *supra* note 3, at 8.

120. *Id.* at 12.

provided actual service plus 133 on a waiting list pending assignment.<sup>121</sup> Stubbs' description of his volunteer corps has the surprisingly contemporary ring of diversity:

The personnel of this volunteer force has been thoroughly representative of the life of the community as a whole, and of the special districts in which they have exercised supervision. Men and women, Catholic, Protestant, and Hebrew, white and colored, have all joined in the common task of correcting the tendencies of the wayward children of Indianapolis.<sup>122</sup>

Because the volunteer probation system was the centerpiece of Stubbs' system, it warrants further description. Investigations were conducted by court-employed probation officers. Once a child likely to require supervision was identified through investigation, a volunteer probation officer living in the area of the child's home was notified. The child was assigned to the probation officer at the completion of the court proceeding. The child and the probation officer were expected to be in weekly contact with at least one visit to the child's home every month. The probation officer was expected to monitor the child's attendance, conduct, progress at school, and the child's employment record, if any. The probation officer was also expected to keep track of the child's conduct in the neighborhood "from the patrolman in the district."<sup>123</sup> Stubbs also asked the volunteer probation officers to make a monthly written report to the court.<sup>124</sup>

After two years, Stubbs seemed upbeat but realistic about the work. He noted that of 446 children placed on probation during the first two years of the court, sixty-three eventually were sent off "to institutions for rugged discipline" and that other "slow in responding" children had remained on probation.<sup>125</sup> But he emphasized that the relationship of volunteer probation officer and child had also resulted in numerous instances of a child's

awakening and development of new standards of right and wrong. . . . These instances justify the statement that after two years' experience the volunteer probation system has been proved the most vital function exercised by the Juvenile Court, because it enabled the Court to provide for every juvenile offender, not punishment, but a friend.<sup>126</sup>

#### IV. RECOGNITION AND IMITATION

A few months after the establishment of the juvenile court in Indiana, the Board of State Charities held its annual meeting in Fort Wayne in September.

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121. *Id.* at 15.

122. *Id.* at 16.

123. *Id.* at 17.

124. *Id.* at 17-18.

125. *Id.* at 18-19.

126. *Id.* at 20.

Juvenile courts were very much on the mind of the conference, which reserved its final session for a very special series of presentations. The first speaker was none other than the founder of the nation's first juvenile court, Judge Richard S. Tuthill of Chicago. Judge Tuthill gave a lengthy presentation on his philosophy of rehabilitating juvenile offenders and on the history of the Illinois act. He also praised the Indiana statute for authorizing paid probation officers.<sup>127</sup> Judge Stubbs then praised Judge Tuthill for his work in organizing the country's first juvenile court. Stubbs also thanked Tuthill for the latter's time and ideas during Stubbs's trips to visit the Chicago juvenile court. Stubbs went on to describe his experience in the Indianapolis Police Court leading to the passage of the Indiana act and reflected on the first six months of its operation.<sup>128</sup> Stubbs was followed by one of the two paid probation officers of his court, Helen W. Rogers. Rogers described the mechanics of the Indianapolis juvenile probation system and had particular praise for the volunteer probation officer corps. In discussing the results obtained from the first six months of the court's operation, she turned to the subject of gangs:

It has been the practice of the court to place on probation all known members of troublesome "gangs" and if possible to discover the "ringleader," and treat him accordingly. The result has been that in neighborhoods where one or two boys have been sent to the Indiana Boys' School and the others probationed, there have been decided improvements in local conditions.<sup>129</sup>

As suggested by Judge Tuthill's visit to Indiana, our state was developing a reputation as a leader in dealing with the problems of troubled youth. Amos Butler would say with pride in the 1903 annual report of the Board of State Charities that "the Juvenile Court Law, . . . with the Dependent Children Law passed by the Legislature of 1897, and the new Board of Children's Guardian's Law passed in 1901, are three laws which, taken together, make such a provision for unfortunate childhood as to be found in few, if any, of the States of our Union."<sup>130</sup> Dr. Charles R. Henderson, a noted University of Chicago sociology professor, reviewed these three laws and concluded that Indiana had "adopted an enlightened modern policy and [was] rapidly creating the machinery for carrying it into effect."<sup>131</sup> This placed Indiana "among the foremost commonwealths of the world in this sphere of wise and just care of the children of the State."<sup>132</sup>

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127. Richard S. Tuthill, *The Juvenile Court*, in INDIANA BULLETIN OF CHARITIES AND CORRECTION, June 1904, at 48, 54-55.

128. George W. Stubbs, *Juvenile Courts*, in INDIANA BULLETIN OF CHARITIES AND CORRECTION, June 1904, at 56.

129. Helen W. Rogers, *The Probation System of the Marion County Juvenile Court*, in INDIANA BULLETIN OF CHARITIES AND CORRECTION, June 1904, at 62, 65.

130. INDIANA BD. OF STATE CHARITIES, ANNUAL REPORT 8 (1903).

131. Charles R. Henderson, *The Children of the State*, in INDIANA BULLETIN OF CHARITIES AND CORRECTION, June 1905, at 133, 134.

132. *Id.*

Stubbs himself had also become well-known. On June 22, 1904, he addressed the annual meeting of the National Conference of Charities and Correction on the topic of "Work of the Juvenile Court."<sup>133</sup> His work attracted international attention as well, with his juvenile court system reportedly used in Sweden, Italy, and several other European countries.<sup>134</sup>

When Judge Stubbs met an untimely death in a streetcar accident in front of his courthouse on March 4, 1911, he was greatly mourned.<sup>135</sup> His successor, Judge Newton M. Taylor, would praise him as the father of the juvenile court who always looked out for the welfare of the child in need.<sup>136</sup> Two decades later, a Columbia University doctoral student, in his dissertation on the juvenile court movement, listed Stubbs as one of four judges identified as pioneers of the juvenile court movement because of their "real accomplishments."<sup>137</sup>

#### V. JUVENILE COURTS IN INDIANA AFTER 1903

It is not within the scope of this Article to give anything more than the most superficial treatment to the development of juvenile courts in Indiana since the first Juvenile Court Act in 1903. Important amendments were made to the Juvenile Court Act in both 1905<sup>138</sup> and 1907<sup>139</sup> so that, by 1907, delinquency, dependency and neglect cases, and cases against parents were being filed in juvenile court. This expanded jurisdiction resulted in the Indianapolis court becoming known as the juvenile and domestic relations court (though it did not have jurisdiction over divorces).<sup>140</sup> In 1945, the general assembly adopted a major revision of the juvenile court act.<sup>141</sup> Between 1966 and 1975, the U.S. Supreme Court rendered an important series of decisions concerning the applicability of constitutional rights in juvenile proceedings.<sup>142</sup> In 1978, a new

133. Letter from Amos W. Butler, Secretary, Board of State Charities, to Judge George W. Stubbs (Apr. 29, 1904), in BOARD OF STATE CHARITIES COLLECTION, LETTER BOOK 795 (Indiana State Archives, Commission on Public Records, Indianapolis).

134. *Learn from Indianapolis; Italy Adopts Stubbs's Plan*, INDIANAPOLIS STAR, Jan. 10, 1909, at 30; *Injuries Fatal to Judge G.W. Stubbs*, INDIANAPOLIS NEWS, Mar. 4, 1911, at 5.

135. *Injuries Fatal to Judge G.W. Stubbs*, *supra* note 134, at 5.

136. BIENNIAL REPORT OF THE JUVENILE & DOMESTIC RELATIONS COURT OF MARION COUNTY 9-10 (1910-1912) [hereinafter 1910-1912 REPORT].

137. LOU, *supra* note 1, at 23.

138. Act of Feb. 27, 1905, ch. 45, 1905 Ind. Acts 51 (repealed 1978).

139. Act of Feb. 23, 1907, ch. 41, 1907 Ind. Acts 59 (repealed 1974) (modifying definition of dependent child).

140. 1910-1912 REPORT, *supra* note 136, at 1-2; 2 LEANDER J. MONKS, COURTS AND LAWYERS OF INDIANA 852-53 (1916).

141. Act of Mar. 9, 1945, ch. 347, 1945 Ind. Acts 1647 (repealed 1978) (establishing juvenile courts in counties with a population that exceeded 250,000 inhabitants).

142. *Breed v. Jones*, 421 U.S. 519 (1975) (double jeopardy); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (trial by jury); *In re Winship*, 397 U.S. 358 (1970) (proof beyond reasonable doubt); *In re Gault*, 387 U.S. 1 (1967) (due process in delinquency adjudications); *Kent v. United*

juvenile code was adopted, reflecting the recent U.S. Supreme Court decisions and the new Indiana criminal code.<sup>143</sup> However, the purpose of the current juvenile code clearly “represents a continuation of the purposes upon which the state’s first juvenile court act was predicated in 1903 and which formed the foundation for the 1945 Act.”<sup>144</sup> As the 21st century approaches, there is a growing sense that it is again time to rewrite the Indiana juvenile code. In response to a request from the Indiana Council of Juvenile and Family Court Judges and the Chief Justice of Indiana, Randall T. Shepard,<sup>145</sup> the general assembly recently authorized a comprehensive study on that subject.<sup>146</sup>

#### CONCLUSION

This Article, I will concede, gives an overwhelmingly favorable review of the early juvenile court in Indiana and its slightly older sibling, the “Child-Saving” Department of the Board of State Charities. Other authors on this subject have found these developments changed nothing of substance,<sup>147</sup> and some have viewed it as creating mischief, constitutional and otherwise.<sup>148</sup> A recent national television commentary illustrates this negative appraisal:

Poor and immigrant parents in the 19th century would see children removed from households for what was said to be insufficient moral instruction. The Children’s Aid Society bound out city kids in the mid-19th century in a forced immigration. They called them captives of urban wretchedness and sent them to live on farms. There was an effort to Americanize ethnic children by separating them from their families and giving them a segregated education. Juvenile courts arose as mechanisms for taking children away from parents who were deemed unfit. Foster care developed with the aim of separating children from parents forever.<sup>149</sup>

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States, 383 U.S. 541 (1966) (due process in waiver proceedings). See Dan Hopson, Jr., *Symposium on Juvenile Problems*: In re Gault: *Introduction*, 43 IND. L.J. 523 (1968).

143. Act of Mar. 10, 1978, No. 136, 1978 Ind. Acts 1196 (codified as amended in scattered sections of the Indiana Code).

144. J. Richard Kiefer, *Commentary*, in WEST’S ANNOTATED INDIANA CODE (Title 31, pt. 2), 14-17 (1979).

145. Randall T. Shepard, *The Challenge of a Challenged Profession*, Remarks to the Indiana General Assembly (Jan. 17, 1996), reprinted in RES GESTAE, Feb. 1996, at 35-36.

146. Act of Mar. 14, 1996, No. 253, 1996 Ind. Acts 2812. This statute creates a fifteen member Juvenile Code Study Commission to “study issues of concern relating to the juvenile laws and make recommendations for their revision and improvement.” The Commission is charged with giving particular attention to “(1) The delivery of juvenile services to delinquent, dependent, neglected, and mentally ill children. (2) The treatment and care of children in need of services and the payment of such treatment and care.” *Id.* at 2813.

147. Fox, *supra* note 4, at 1230.

148. See *In re Gault*, 387 U.S. 1, 18-28 (1967).

149. Roger Rosenblatt, *Essay*, on THE NEWSHOUR WITH JIM LEHRER, Feb. 12, 1996,



But rather than close with this pessimistic view of history, I prefer to conclude with a passage written about Judge Stubbs in 1916. Although its sentimental and naïve tone admittedly plays into the hands of the skeptics, I think these words also suggest that we are better off for the efforts of the juvenile court pioneers:

Judge Stubbs was . . . largely responsible for the great good that the court is now performing for the city of Indianapolis. He . . . blazed the way and worked out a system of handling children and their parents, which has proven very successful. This kindly, genial man, by his wholesome advice and admonition, started hundreds of wayward and delinquent boys and girls on the road to upright and useful manhood and womanhood. His appeals to drunken and dissolute fathers and mothers brought happiness to many a home in Indianapolis. Yet, if the milk of human kindness failed to bring about the proper results, he did not shirk from sending recreant fathers to the workhouse or vicious mothers to a place where they would not have the opportunity to injure their children. He was always looking out for the welfare of the child, and many children now living in the city have been rescued from vicious, immoral and drunken parents and placed in surroundings where they might have a fair chance to become useful citizens. He returned to their homes many runaway or vagrant children each year, sending them either to their own homes or intrusting them to the care of some children's institutions. Sick and afflicted children were given needed medical attention; abandoned children were properly cared for. In fact, it is impossible to estimate the good which this man did for the children of the city.<sup>150</sup>

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150. 2 MONKS, *supra* note 140, at 854-55.